IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4240 OF 2005

The Cloth Markets and Shops Board for Greater Bombay and another).. Petitioners

Versus

Mrs.Ramgauri Ranchhodbhai Raja & anr.).. Respondents

Mr.P.G. Lad for the Petitioners.

Mr.J.J. Thakkar for Respondent No.1.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 6TH SEPTEMBER 2005

P.C.:

. This Petition challenges the concurrent findings of fact arrived at by the trial Court and the appellate Court. Both the Courts have discharged the Obstructionist Notice taken out by the Petitioners. Both the Courts have held that the Petitioners have no independent right and cannot be said to be a protected tenants under the Bombay Rent Act.

2. The main contention of the Petitioners is that Respondent Nos.1 and 2 have, by playing a fraud on the Court, obtained a decree in collusion thereby rendering the Petitioners without any remedy. Reliance is placed on the judgment of the Supreme Court in the case of

S.P.Chengalvaraya Naidu (Dead) by LRs. vs. *Jagannath (Dead) by LRs. and others*, **(1994) 1 SCC 1**, in support of the submission that the very fact that Respondent Nos.1 and 2 were related and have obtained a decree by consent indicated that they had played a fraud on the Court. It is submitted on behalf of the Petitioners that the Board was in exclusive possession of the suit premises and, therefore, was a protected tenant as it was a licensee of Respondent No.2 who was in turn a licensee of Respondent No.1.

3. Both the Courts below have found that the Board had resolved to take non-exclusive possession of the suit premises and, therefore, the question of the Petitioners being in exclusive possession of the suit premises does not arise. Furthermore, agreements were entered by the Petitioner from year to year indicating that the possession was not exclusive. In such circumstances, I see no reason to interfere. Hence, Writ Petition rejected.

4. Mr.Lad for the Petitioners seeks time to vacate the suit premises. Time to vacate the suit premises granted upto three months from today on filing the usual undertaking. Undertaking to be filed within two weeks.

5. The amount deposited in the trial Court may be

withdrawn by the original Plaintiff.